ISSUES MEMORANDUM
May 7, 2014

BOSTON GAS COMPANY D/B/A NATIONAL GRID
PETITION FOR JURISDICTIONAL DETERMINATION
(Liquefaction Equipment at Commercial Point, Dorchester, City of Boston)
EFSB 14-1

I. NATURE OF THE PROCEEDING

Applicant: Boston Gas Company d/b/a National Grid ("Boston Gas" or "Company")

Section 2.09 of the Energy Facilities Siting Board's ("Siting Board" or "Board") regulations (980 CMR 2.09) allows an applicant to petition the Board for a determination of whether construction of a facility is subject to Siting Board jurisdiction. If subject to Board jurisdiction, the applicant cannot construct and operate the facility unless and until the Siting Board approves a petition to construct pursuant to G.L. c. 164, §69J.

On February 21, 2014, Boston Gas filed a petition pursuant to 980 CMR 2.09 ("Petition") seeking a determination as to whether the Company's proposed installation of new liquefaction equipment[1] ("Project") at its Commercial Point Liquefied Natural Gas ("LNG") facility ("Commercial Point" or "Facility") in Dorchester[2] would require Section 69J approval. The jurisdictional question hinges on whether the liquefaction equipment would constitute a "facility" under the definition of that term in G.L. c. 164, §69G. In Section 69G, "facility" includes a unit designed for or capable of manufacturing gas, except for such units below a minimum size as established by Board regulation (fifth clause within the definition of "facility").[3,4]

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1 Liquefaction equipment takes natural gas in a gaseous state and liquefies the gas into LNG. Liquefaction requires chilling the gas to about - 260 degrees Fahrenheit.

2 The Facility is located at 220-238 Victory Road in Dorchester.

3 The entire fifth clause of the definition of "facility" in Section 69G is: "a unit, including associated buildings and structures, designed for or capable of the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation[.]"

4 The Board's regulation that establishes minimum size thresholds provides that:

> Facility means any "facility" described in M.G.L. c. 164, §69G including:
> …
> (e) a unit including multiple tanks and associated buildings and structures, designed for, or capable of, the manufacture or storage of gas, except:

(continued…)

If the Board determines that the proposed liquefaction equipment constitutes a facility under Section 69G, then the Company alternatively asks that the Siting Board waive jurisdiction under its regulation, 980 CMR 7.07(8)(a)(2). The Company's rationale for a waiver is that the new liquefaction equipment will replace existing equipment and that the increase in liquefaction capacity should not be viewed as significant. Boston Gas Memorandum of Law in Support of Petition at 14, ("Boston Gas Memo").[5]

II. OVERVIEW OF THE PROJECT

Existing Facility: Commercial Point was built in the 1960s and early 1970s as a peak-shaving LNG facility with approximately 5.5 million standard cubic feet per day ("mmscfd") of natural gas liquefaction capability, two LNG storage tanks (one 331,000 barrel ("bbl") storage tank and one 290,000 bbl storage tank), and 240 mmscfd of LNG vaporization capacity (Boston Gas Memo at 2). The initial elements constructed at the Facility, including the liquefaction equipment and the 290,000 bbl tank, were placed in operation in 1969. Additional elements of the Facility, including the 331,000 bbl tank, were placed in service in 1971 (id.).

The 290,000 bbl LNG storage tank was dismantled in 1992; the 331,000 bbl tank remains in service (id.). The remaining LNG tank holds approximately a five-day supply at the Facility's full vaporization rate of 240 mmscfd (Exh. EFSB-1). The existing liquefaction system has not been used since 2002, is partially disassembled, and is scheduled to be removed (Boston Gas Memo at 2). Currently, LNG is trucked in to refill the storage tank prior to the winter heating season and the LNG is vaporized for sendout to the Company's low-pressure distribution system (id.).

Proposed Facility: Boston Gas proposes to replace the existing liquefaction equipment at Commercial Point, which is no longer serviceable, with new liquefaction equipment having a capacity of approximately 20 mmscfd (id.). At that rate of liquefaction, it would take approximately 57 days to fill the Commercial Point tank (Exh. EFSB-1). Additionally, the Company intends to use the proposed liquefaction equipment as one source of LNG for its other Massachusetts LNG storage facilities (Exh. EFSB-10). The liquefaction equipment would include a new feed gas pretreatment system in the area previously occupied by the original liquefaction system equipment. The pretreatment system removes water, carbon dioxide, and sulfur compounds from pipeline gas; these compounds would freeze at low temperatures and interfere with the liquefaction process (Exh. EFSB-4).

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1) a unit with a total gas storage capacity of less than 25,000 gallons and also with a manufacturing capability of less than 2,000 MMBtu per day;
2) a unit whose primary purpose is research, development, or demonstration of technology and whose sale of gas, if any, is incidental to that primary purpose; or
3) a landfill or sewage treatment plant. 980 CMR 1.01(4)(e)

[5] Boston Gas filed the Boston Gas Memo with its Petition on February 21, 2014.

The Project would also include:

- Construction of a new compressor building on the east side of the existing LNG storage tank to contain the new liquefaction units and refrigeration compressors (Boston Gas Memo at 3);

- Installation of a new pretreatment heater on the far west side of the Facility close to where the existing, decommissioned pretreatment heater is located (id.);

- Construction of a new switchyard for the new electrical service (id.). The anticipated electric load of the proposed liquefaction equipment at peak capacity is approximately 15 megawatts ("MW") (Exh. EFSB-6);

- Realignment of the access driveway to the trucking station, to provide a turn-around area for trucks for a drive-through loading operation (Boston Gas Memo at 3); and

- Installation of new liquid nitrogen storage and vaporization to provide makeup supply for the new refrigeration system (id.).

A preliminary site plan and layout of the Facility showing the proposed locations of Project elements is provided as Exhibit 1 to this Memorandum. As shown in Exhibit 1, the Project would be constructed within the existing Facility footprint.

The Company stated that is does not expect the Project to have significant visual impacts because the landscaping at the Facility would remain the same and because the existing LNG storage tank, which is the dominant visual feature on the site, would not be altered (Exh. EFSB-18). The Company does not expect that the Project would result in any increase of noise at abutting property lines or in neighboring residential areas and it intends to meet the requirement in earlier Department of Public Utilities ("Department") orders granting zoning exemptions (Boston Gas Company, D.P.U. 15513 (1967) and Boston Gas Company, D.P.U. 16457 (1970)) that noise levels at the property line not exceed ambient sound levels (Exh. EFSB-17).[6] The Company would perform a noise study to establish the noise level at the existing facilities, including the background noise, and model the expected noise of the new facilities. The Company would verify these projections through additional noise analysis conducted during plant commissioning (Exh. EFSB-17).

The Project would eliminate the current practice of using LNG delivery trucks to fill the Commercial Point tank (Exh. EFSB-8). Based on the average number of deliveries to the

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[6] The Massachusetts Department of Environmental Protection ("MassDEP") Noise Policy limits a new noise source to a ten A-weighted decibel ("dBA") increase above the ambient sound at the property lines of the new source and nearest residences. The MassDEP Noise Policy also prohibits the production of "pure tone" conditions, where any one octave band sound pressure level exceeds the two adjacent frequency bands by three dBA or more. 310 CMR 7.10 and related DEP policy found at: http://www.mass.gov/eea/docs/dep/air/community/noisefs.pdf.

Facility over the last ten years, this would eliminate 851 LNG truck deliveries per year, as shown in the table below (Exh. EFSB-9). However, even if there is no change to the Company's regional LNG usage, truck traffic at the Facility would increase because the Company intends to ship approximately 1,080 truckloads of LNG per year from Commercial Point to the Company's other Massachusetts LNG storage facilities instead of sourcing that LNG from Distrigas of Massachusetts or other suppliers (Exh. EFSB-10). The Company stated that it has no plans to truck LNG from the Facility to power plants for electric generation (Exh. EFSB-12).

Table 1. Estimated Average Annual LNG Traffic to and from the Company's LNG Facilities

	LNG Deliveries to Commercial Point (Truckloads)	**LNG Shipments from Commercial Point to other Massachusetts LNG facilities (Truckloads)**	**LNG Deliveries to other Massachusetts and Rhode Island LNG facilities from external suppliers (Truckloads)**
Current	851	0	3,585
With Project	0	1,080	2,505

Source: Exh. EFSB-10

Currently, inbound LNG trucks enter the Facility via Exit 13 from Interstate 93 northbound and turn right at the end of the ramp onto Victory Road (Exh. EFSB-11). Outbound trucks typically leave the Facility travelling southwest on Victory Road, turn right onto Freeport Street, and then continue along Freeport Street for approximately one quarter mile to the ramp on the right to Interstate 93 southbound (id.). Future trucking will use the same routes that the LNG trucks currently follow (id.). Therefore, truck traffic would continue to make only limited use of local roads near the Facility before accessing the interstate highway system.

The Company has held several meetings with representatives from the City of Boston, including a February 13, 2014 meeting with staff from the Boston Inspectional Services Department ("ISD") and an April 7, 2014 meeting with staff from the Boston Redevelopment Authority ("BRA") (Exh. EFSB-5). ISD staff expressed a preference for local permitting of the Project, and the Company stated its intention to obtain any necessary zoning relief from the City of Boston, unless zoning relief were unavailable or denied, in which case the Company would seek a zoning exemption from the Department (Exhs. EFSB-5; EFSB-8). BRA staff confirmed that the local permits required for the Project would not be officially determined until a building permit application is submitted to ISD (Exh. EFSB-5). The Company anticipates that a building permit application would be submitted to ISD in the fall of 2014 once engineering is complete (Exh. EFSB-5). The Company has also held numerous meetings to present the Project to City of Boston officials, including the former mayor; the chief of Environment, Energy, and Open Space; the chief of staff of the Boston Mayor's Office; the director of Neighborhood Service; the acting fire commissioner; and two City Council members (id.). The Company intends to schedule a similar meeting with Mayor Martin Walsh (id.).

The Company stated that the construction and operation of the liquefaction equipment would be subject to the Code of Federal Regulations (49 CFR 193) LNG Plants and Associated Equipment; National Fire Protection Association 59A Utility Liquid Propane and Gas Plant Code; and 220 CMR 112.00: Design, Operation, Maintenance and Safety of Liquefied Natural Gas Plants and Facilities (Exh. EFSB-13). Regulatory authorities, such as the Department, would use these codes to inspect for compliance during construction of the Project and operation of the Facility (id.). Trucks transporting LNG are required to follow safety regulations outlined in Title 49 CFR that address issues including operational requirements, driver training, and maintenance inspections (Exh. EFSB-11).

The Company designed the Project to withstand a 500-year flood event, including a 1.6-foot estimated sea level rise over the 30-year design life of the Project, as well as wave action and high winds during such a flood event (Exh. EFSB-14). Much of the site is outside of the Federal Emergency Management Agency's ("FEMA") designated flood hazard areas. For the Project areas that fall within a flood hazard area, the ultimate design would incorporate measures that include increasing the elevation of existing grade, where necessary, and designing building and equipment foundations such that the Project will remain intact during a 500-year flood event (id.).[7]

Rationale for the Project: Boston Gas states that LNG is essential to the reliability of its delivery system during the winter heating season, (Boston Gas Memo at 4). Recently, while LNG has been the source for only about six percent of the Boston Gas (or National Grid) total winter season supply, it has provided approximately 42 percent of the Company's supply on peak days (id.). LNG peaking capacity has been part of the least-cost mix for meeting peak demand on the Company's system (id.). LNG also provides system reliability benefits at other times of the year by being available in case of supply disruptions, such as pipeline or compressor station failures (id.).

For more than 30 years, the Company's LNG supply has been sourced primarily from the Distrigas import terminal in Everett (Boston Gas Memo at 4). Boston Gas asserts that by installing the new liquefaction equipment the Company would be able to reduce: (1) the reliability concern relating to having only a single source of LNG supply (i.e., Distrigas); (2) the reliability concern relating to the imported sources of Distrigas's LNG; and (3) exposure of the Company and its customers to globally priced (and potentially more expensive) LNG supplies (id.).

Boston Gas identified a spring 2015 construction start date as the earliest practicable date that would allow for engineering, designing and permitting the Project. A spring 2015 construction start date would enable an in-service date of April 2017. The April 2017 in-service date would allow the Company to liquefy natural gas during the spring and summer of 2017 to serve its customers in the winter of 2017/2018 (Boston Gas Memo at 4).

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[7] The Siting Board's determination of jurisdiction will be based on the facts provided in the Petition and in answer to the information requests as described herein. The Board expects to be informed by the Company if there are any substantial changes to these facts.

Procedural History: The Petition was filed on February 22, 2014. The Presiding Officer directed the Company to publish a "Notice of Petition for Determination of Board Jurisdiction" ("Notice") in the *Boston Globe*, and to send the Notice by electronic mail to all gas companies in Massachusetts, the Attorney General, various officials of the City of Boston, and the Department's generic service list for the gas industry, which includes, among others, representatives of environmental organizations. The Notice invited interested parties to submit comments on the Company's Petition; no comments were received. The Siting Board submitted one set of information requests to the Company and received answers on April 17, 2014.

III. ISSUE PRESENTED FOR BOARD CONSIDERATION[8]

The central question in this proceeding is whether liquefying natural gas constitutes "manufacturing" of gas as that term is used in the definition of "facility" in G.L. c. 164, §69G.[9]

A. STATUTORY INTERPRETATION – SJC STANDARD OF REVIEW

Statutory interpretation necessarily begins with the statutory text itself, because "[e]lementary rules of statutory construction require that each statute be interpreted as enacted." Commonwealth v. Gore, 366 Mass. 351, 354 (1974). In interpreting a statute, the Supreme Judicial Court ("SJC") attempts "to give effect and purpose to all of [the] words" in the statute, and therefore no one statutory provision is read in isolation from the remaining provisions. Providence and Worcester R.R. Co. v. Energy Facilities Siting Board, 453 Mass. 135, 142 (2009). If the statutory language is plain, then the words receive their "usual and natural meaning." Commonwealth v. Gore, 366 Mass., 354. However, the Court "may look to outside sources to determine the meaning of the statute whose language is unclear." Commonwealth v. Lightfoot, 391 Mass. 718, 720 (1984). Except when the language is clear and unambiguous, the SJC gives "substantial deference" to the Siting Board to interpret the statute the Board must implement and enforce. See City Council of Agawam v. Energy Facilities Siting Board, 437 Mass. 821, 828 (2002).

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8 The existing Facility, including the liquefaction equipment, was constructed prior to the creation of the Siting Board's predecessor agency, the Energy Facilities Siting Council (Boston Gas Memo at 5-6). The Company asserts that the Legislature was clear that facilities constructed prior to May 1, 1976 are not subject to the Siting Board's jurisdiction, and so the existing Facility is grandfathered and exempt from Siting Board review (id. at 5-6).

9 The equipment to be installed, as described in the Petition, does not include LNG storage. After the liquefying process is complete the LNG is transported by a pipe connection into the existing LNG storage tank. Thus, it is clear that the liquefaction equipment described in the Petition does not "store" gas. Furthermore, the Project does not add another storage tank and does not increase the capacity of the existing LNG tank.

B. STATUTORY TEXT

In this case, the Siting Board must interpret the definition of the term "facility" as defined in G.L. c. 164, §69G to determine whether the proposed Project requires the Siting Board's approval under G.L. c. 164, §69J. Specifically, the Board must determine whether the proposed Project constitutes "a unit, including associated buildings and structures, designed for or capable of the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation;" (Fifth definition of "Facility" in G.L. c. 164, §69G).

The term "manufacture" is not defined in Section 69G. The common, everyday meaning of "manufacture" is "something made from raw materials by hand or by machinery." (The Merriam-Webster dictionary website, first definition, http://www.merriam-webster.com/dictionary/manufacture, accessed on April 10, 2014). Changing gas (i.e., the "raw material") into liquid so that the liquid can later be converted back into the original raw material does not seem to be "manufacturing" as that term is typically used.

Of course, in addition to considering the common meaning of the term "manufacture," the Board must consider the words and legislative intent of the entire statutory text. While the General Court did not define the terms "manufacture" or "manufactured gas" in Section 69G, it did define "gas" as "a term which shall include natural gas, propane air, synthetic natural gas and liquefied[10] natural gas." G.L. c.164, §69G.

"Natural Gas" is defined as "a type of gas which originates in the ground and is predominantly methane." G.L. c.164, §69G. The process of removing the natural gas from the ground for delivery via pipelines to consumers would not appear to be manufacturing as the natural gas was already "made" prior to its extraction from the ground. Thus, natural gas, as defined in G.L. c.164, §69G, is clearly not manufactured gas within the context of Section 69G.

The definition of "liquefied natural gas" is "a natural gas that has been changed into a liquid by cooling the temperature at atmospheric pressure to approximately -260ºF." G.L. c. 164, §69G. The General Court uses the verb "changed" to describe how natural gas becomes LNG, and not "made," a word more often associated with manufacturing. While not free from all ambiguity, the verb choice at least supports a statutory interpretation that LNG should not be considered to be manufactured gas because the chemical composition of natural gas does not change or break down when it is liquefied. In that sense, natural gas is not manufactured when it is liquefied because LNG was already natural gas when it was in a gaseous state.

The definition of "synthetic natural gas" is also instructive in attempting to define manufactured gas: "a type of gas which is *made* by a facility which produces a gaseous fuel from the

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[10] In the definition of "gas", both the West Publishing Company's annotated version and the General Court's online version of the General Laws spell the term "*liquified* natural gas," while in the stand-alone definition of LNG, both spell the term "*liquefied* natural gas" (emphasis added). As reflected in the Acts of 1974, the General Court spelled both terms as "liquefied natural gas." St. 1974, c. 852, §2, adding the pertinent definitions to G.L. c.164, §69G.

manufacture, conversion or reforming of liquid or solid hydrocarbons (emphasis added)." G.L. c.164, §69G. Thus, synthetic natural gas expressly is made and manufactured, while LNG expressly is a different type of gas and is not defined using the words "made" or "manufacture."

C. BOARD REGULATION

The Siting Board's regulations, 980 CMR, should also be examined to determine if they provide any guidance in defining "manufacture" under G.L. c. 164, §69G.

First, Section 1.01(4) contains the definitions for the purpose of 980 CMR. The statutory and regulatory definitions of "facility" are identical except that the definition in 980 CMR 1.01(4)(e) establishes the capacity threshold for gas manufacturing and storage facilities under the Board's jurisdiction. Section 1.01(4) does not define the term "manufacture."

However, two regulations use the words "liquefaction" or "liquefy" LNG: Sections 7.00 and 10.00 of 980 CMR. Section 7.00 was originally promulgated by the Energy Facilities Siting Council (the "Siting Council"). The regulation implements G.L. c. 164, §69I, which imposes a requirement on gas companies to file a five-year forecast of gas demand and supply ("long-range plan") every two years for review and approval. In pertinent part, the regulation establishes the procedure and requirements for the content of the long-range plans filed by gas companies every two years.

Two provisions of the regulation are relevant to this discussion. In listing the types of facilities that must be included in long-range plans, Section 7.07(2)(c)(1) requires a gas company to provide an inventory of existing facilities containing, among other items, "a general description of the type of facility (for example for storage facilities: LNG storage, vapor storage; for manufacturing facilities: SNG plant, propane air facility, LNG vaporization facility, LNG liquefaction facility)[.]" Similarly, Section 7.07(7)(c)(1) makes the same categorization of storage and manufacturing facilities, with LNG liquefaction facilities falling within the manufacturing category, in describing the required listing of planned facilities.

When the Siting Council was replaced by the Siting Board and the Board was administratively placed within the Department, the responsibility for reviewing long-range supply plans was transferred to the Department (St. 1992, c. 141, §§12-14, 55), and remains with the Department. G.L. c. 164, §69I. The provisions of the Siting Council's regulation establishing the required contents of the long-range plans to be filed by gas companies have not been adopted or otherwise followed by the Department.[11] .[12] However, Sections 7.07(2)(c)(1) and 7.07(7)(c)(1) may

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[11] For example, in the most recent long-range plan filed with the Department by Boston Gas, its petition did not contain or categorize the information as required by Sections 7.07(2)(c)(1) and 7.07(7)(c)(1). Boston Gas Company, D.P.U. 13-01, Petition (February 21, 2013). The Department approved the plan on March 14, 2014 (Boston Gas Company, D.P.U. 13-01 (2014)).

demonstrate a statutory interpretation by the Siting Council that liquefaction was intended to be defined as the manufacturing of gas.

The text in 980 CMR 7.00 that includes an "LNG liquefaction facility" as one of several "manufacturing facilities" pertains to filing requirements for long-range plans. In that context, it was important for the gas company to identify all of its existing and future sources of supply, so that at that time the Siting Council could assess the adequacy of the supply plan. For that assessment, it is of doubtful significance whether any particular type of supply, e.g. liquefaction, is included in the manufacturing category rather than the storage category. Accordingly, it seems unlikely that the Siting Council intended its long-range supply plan filing categorizations to fundamentally define the jurisdiction of the agency.

Section 10.00 of 980 CMR imposes siting requirements on intrastate LNG storage facilities. Section 10.01(2)(b)(1) defines "LNG Processing Equipment" as including "the installed cost of equipment used to receive, liquefy, hold and regasify LNG for delivery into the operator's distribution system." The inclusion of the term "liquefy" in the definition for LNG Processing Equipment under the regulation for the siting of intrastate natural gas storage, suggests that liquefaction equipment should be considered ancillary to the storage of LNG, instead of as equipment for the manufacture of LNG. In addition, the Siting Council used the word "processing" to describe liquefaction equipment, rather than "manufacturing," the word used in the statutory definition of "facility" (G.L. c. 164, §69G).

D. DEPARTMENT USE OF THE TERM "MANUFACTURED GAS"

The Department is responsible for a wide range of regulation, including ratemaking, for investor-owned gas distribution companies in the Commonwealth. Since 1990, as part of determining each gas distribution company's cost of service, the Department has included expenses associated with the cleanup of hazardous material located at sites once used to produce "manufactured gas." The Department's policy concerning these expenses was established when it approved a settlement at the conclusion of a generic investigation into the matter in 1990. Generic Investigation of the Facts Surrounding the Ratemaking Treatment of the Costs of Investigating and Remediating Hazardous Wastes Associated With the Manufacture of Gas During the Period 1822-1978, D.P.U. 89-161 (1990) ("Generic Investigation Order"). For purposes of the Generic Investigation Order, the Department defined "manufacturing gas process" as the "now-discontinued process" of manufacturing gas from coal and other feedstock. Id. at 1.

In the Generic Investigation Order, the Department described the development of the manufactured gas industry and identified the processes and feedstock used in manufacturing the

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[12] Although the Chair of the Department may refer a long-range supply plan for review and approval to the Siting Board if the plan is submitted with a petition to construct a facility pursuant to Section 69J, jurisdiction over plan filing requirements rests with the Department and not the Siting Board. G.L. c.164, §69I.

gas.[13] Id. at 10-17. The Department stated that natural gas pipelines "sounded the death knell" for the manufactured gas processes because natural gas was cheaper and had a higher British thermal unit ('Btu") content. Id. at 11. When the pipelines were extended into Massachusetts in the 1950s, gas companies converted from manufactured gas to natural gas as their base load source of supply. Id. at 11-12. The Department reported that gas companies stopped manufacturing gas in Massachusetts except for "some high Btu oil gas plants which were used for peak-shaving purposes into the 1960s and early 1970s."[14] Id. at 12.

As described in the Generic Investigation Order, "manufactured gas" meant a gas that is made from and starts out as coal, oil or another substance that is originally a solid or liquid and not a gas. Furthermore, the term was used to describe a type of gas that is different than "natural" gas.

E. FERC AND DPU ACCOUNTING FOR GAS COMPANIES

The Federal Energy Regulatory Commission's ("FERC") Uniform System of Accounts for Natural Gas Companies includes a subcategory within its Gas Production Plant accounts (Accounts 301 to 399) for "Manufactured Gas Production Plant." 18 CFR 201, Accounts 304-320. All of these accounts are for equipment that relates to producing gas from coal, oil, petroleum and other feedstock that fit the definition of "manufacturing gas process" used by the Department in the Generic Investigation Order. FERC includes an account for "liquefaction equipment," Account 363.1 (18 CFR 201). Account 363.1 is included in a different subcategory: Natural Gas Storage and Processing Plant, Other Storage Plant (Accounts 360-363.5). Thus, for FERC accounting purposes, liquefaction equipment is not used for the "manufacture" of gas.

The Department has adopted a similar regulation, "Uniform System of Accounts for Gas Companies," under 220 CMR 50.00. Accounts 304 through 320 relate to "Manufactured Gas Production Plant" and Account 363 relates to "Other Equipment" under "Storage Plant," which would seem to capture liquefaction equipment.[15]

The Company booked the existing liquefaction equipment at the Facility under Department accounts "316 – Other Reforming Equipment" and "320 – Other Equipment"

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[13] The Department also described the process residuals, like coal-tar wastes, that were disposed on-site and needed to be remediated. Generic Investigation Order, at 18-24.

[14] The statutory language pertaining to manufacture of gas in Section 69G was enacted in 1974, when a few of these types of manufacturing gas plants were still in operation. St 1974, c. 852, §§1, 2.

[15] The Department's regulation does not have sub-accounts under Account 363 like the FERC regulation does. However, liquefaction is discussed in a note that appears after Account 362.

(Exh. EFSB-19-revised).[16] The Company intends to book the liquefaction equipment installed as part of this Project under Department account "363 – Other Equipment" (id.).

Options for the Board:

1. Find that liquefaction fits the definition of the manufacture of gas, and therefore, the proposed Project is a "facility" within Section 69G.

2. Find that liquefying natural gas is not the manufacture of gas within Section 69G, and therefore, the Board does not have jurisdiction over the proposed Project.

IV. REQUEST FOR WAIVER

If the Board determines that the proposed Project would be a facility under Section 69G, then the Company requests that the Board nevertheless waive its jurisdiction pursuant to 980 CMR 1.02(1) (Petition at 4). The Board may only waive a regulation – it may not waive a statutory obligation (980 CMR 1.02(1)).[17] According to the Company, 980 CMR 7.07(8)(a)(2) could be used as the basis to justify that the Siting Board waive its jurisdiction in this case.[18]

Section 7.07(8)(a)(2) provides:

> (8) Exclusions. The following activities are deemed not to constitute the construction of facilities subject to 980 CMR 7.07(7):
>
> (a) modification, addition to, or replacement of equipment at an existing site, which is a component part of an existing facility capable of the manufacture or storage of gas, unless such modification, addition, or replacement:
>
> …(2) increases the capacity of the manufacturing component of the facility by more than 50% or 25,000 MMBtu per day provided that

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16 The existing liquefaction equipment is fully depreciated, except for a salt bath heater that was installed in 2003 (Exh. EFSB-20 revised). The salt bath heater is no longer in use but has a remaining book value of $172,652 (id.)

17 Section 1.02 provides that:

> (1) Waiver of Rules. Where good cause appears, not contrary to statute, the Board and any Presiding Officer may permit deviation from any rules contained in 980 CMR.

18 In the Company's argument that the Project is not a jurisdictional facility, it contends that Section 7.00 is not intended to define the "facilities for which a full-scale Siting Board jurisdictional review is required pursuant to G.L. c. 164, §§ 69G, 69J" (Boston Gas Memo at 11). However, the Company suggests that if the Siting Board claims jurisdiction over the Project, Section 7.07(8)(a) could be used to grant the Project a waiver (id. at 14).

> increases of 10,000 MMBtu per day or less do not constitute the construction of facilities under 980 CMR 7.07(7)… .

The existing liquefaction equipment has a capacity of 5.5 mmscfd, whereas the new equipment would have a capacity of 20 mmscfd for a net increase of 14.5 mmscfd or approximately 14,500 MMBtu/day – a 264 percent increase in liquefaction capacity (Boston Gas Memo at 13). Although the new equipment would increase the liquefaction capacity by more than 50 percent, Boston Gas points out that the increase would be less than the conditional 25,000 MMBtu exemption threshold (subject to a further test of no more than a 50% capacity increase) and that the increase would be "only slightly higher" than the unconditional exemption threshold Section 7.07(8)(a)(2) of less than a 10,000 MMBtu per day increase in capacity (id. at 14). The Company cites the Board's recent University of Massachusetts at Amherst Advisory Ruling ("UMass Advisory Ruling") (August 20, 2012) to demonstrate that the Board has the discretionary authority to waive a regulation pursuant to 980 CMR 1.02(1) to avoid Siting Board jurisdiction when good cause is shown (id. at 13).

In the UMass Advisory Ruling, the Board waived the 25,000-gallon gas storage minimum threshold contained in 980 CMR 1.01(4) pursuant to 980 CMR 1.02(1).[19] UMass proposed to install two temporary LNG tanks at its Campus Heating Plant, a cogeneration unit that provided steam for central heating and 16.5 MW of electric generation capacity. Combined, the two UMass LNG tanks might have a capacity of 26,000 or 30,000 gallons. In the Ruling, the Board found good cause to waive the 25,000-gallon threshold because the minimum size exemptions were intended to retain jurisdiction over utility-scale gas facilities but to exempt non-utility storage facilities, and that the UMass project would be close to the jurisdictional threshold (25,000 gallons), would be a non-utility facility, and would be temporary in nature (UMass Advisory Ruling at 5-6). The Board also found that the UMass project would provide a number of benefits to UMass, its students and faculty, and the taxpayers of the Commonwealth, and would further environmental and energy efficiency policies of the Commonwealth (id.).

Boston Gas does not mention 980 CMR 1.01(4) (which establishes a 2,000 MMBtu/day gas manufacturing threshold for jurisdictional facilities) as a proposed basis for its request for a waiver under 980 CMR 1.02(1) in the Boston Gas Memo. Instead, Boston Gas characterizes the Project as a "replacement of liquefaction equipment that should not be considered a 'facility' under G.L. c. 164, §§ 69G, 69J" because the Board could waive the minimum size provisions of 980 CMR 7.07(8)(a) (Boston Gas Memo at 6). The Company asserts that, although the liquefaction capability of the facility would increase by more than 50 percent, the increase would be less than 25,000 MMBtu per day and that 14,500 MMBtu per day is "only slightly higher" than the unconditional exemption threshold in the regulation of less than a 10,000 MMBtu per day increase in capacity (id. at 14).

To grant the waiver as requested under 980 CMR 1.02(1), the Board would have to find that Sections 7.07(2) and (7) are intended to define liquefaction as manufacturing for jurisdictional purposes under G.L. c. 164, §69G. If the Board so finds, then the Board must also find that 980 CMR 7.07(8)(a) is still applicable to existing facilities and is not superseded by the more

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[19] The minimum threshold regulation is quoted in its entirety in footnote four.

recent promulgation of the minimum threshold provisions established in 980 CMR 1.01(4).[20] Even if Section 7.07(8)(a) is applicable, the waiver as requested may present an issue as to whether the existing but long-dormant, inoperable liquefaction equipment should be considered "a component part of an existing facility[.]" 980 CMR 7.07(8)(a).

Even if Section 7.07(8)(a) is superseded or the on-site liquefaction equipment is not an "existing facility," then the minimum threshold provisions in 980 CMR 1.01(4) would be available to waive, after finding good cause.

Boston Gas asserts that the Board should find good cause to waive the regulation in this case because:

- Need is immediate as LNG is crucial for reliable service on critical winter peak days, and the public will also benefit from more competitively priced peak shaving gas (id.);
- The Project must and will comply with federal, state, and local safety requirements (id.);
- More peak-shaving LNG will displace some oil-based, peak-shaving products, in support of environmental policies like the Global Warming Solutions Act (id. at 13-14); and
- LNG will no longer need to be trucked to Commercial Point, avoiding 850 truck trips per year (id. at 14).

[20] The Board adopted the minimum threshold provisions in 2011. Rulemaking to Amend the Regulation at 980 CMR §1.01(4)(e) in Order to Establish Exclusions from Siting Board Jurisdiction for Certain "Facilities" as Defined Therein, EFSB 09-RM-1 (June 20, 2011). In the Final Decision adopting those amendments, the Board did not discuss any provision in 980 CMR 7.00.

Options for the Board:

1. Find that the provisions of 980 CMR 7.00 [long-range planning regulation] are applicable to the consideration of a waiver request for the Project under 980 CMR 1.02(1) and that the Project constitutes a "modification, addition to, or replacement of equipment at an existing site" within the meaning of 980 CMR 7.07(8)(a)(2). If the existing inoperable liquefaction equipment is deemed to have a capacity of 5.5 mmscfd (approximately 5,500 MMBtu/day), then the Project's effective increase in capacity would be 14.5 mmscfd (approximately 14,500 MMBtu/day), which is below the 25,000 MMBtu conditional exemption threshold of 980 CMR 7.07(8)(a)(2). However, the Project's percentage increase in liquefaction capacity would be 264 percent, which significantly exceeds the exemption threshold of up to a 50 percent increase in capacity under 980 CMR 7.07(8)(a)(2). The Project would also exceed the unconditional exemption threshold of up to a 10,000 MMBtu increase in capacity. The resulting options include:

    a) Determine that the 14,500 MMBtu/day capacity increase would not be significantly above the unconditional exemption threshold of up to a 10,000 MMBtu increase in capacity under 980 CMR 7.07(8)(a)(2) and that good cause has been shown to waive this regulation. Therefore, grant the waiver request under 980 CMR 1.02(1).

    b) Determine that good cause has not been shown to waive 980 CMR 7.07(8)(a)(2). Therefore, deny the waiver request under 980 CMR 1.02(1).

2. Find that the provisions of 980 CMR 7.00 [long-range planning regulation] are not applicable to the consideration of a waiver request for the Project under 980 CMR 1.02(1). In this case, the only other applicable regulation to waive would be 980 CMR 1.01(4), which establishes Board jurisdiction for manufacturing facilities with a capacity of greater than 2,000 MMBtu per day. The proposed Project would have a capacity of approximately 20,000 MMBtu per day.

    a) Determine that good cause has been shown to grant the waiver request from 980 CMR 1.01(4) under 980 CMR 1.02(1). Therefore, grant the waiver.

    b) Determine that good cause has not been shown to waive 980 CMR 1.01(4) under 980 CMR 1.02(1). Therefore, deny the waiver.

Exhibit 1

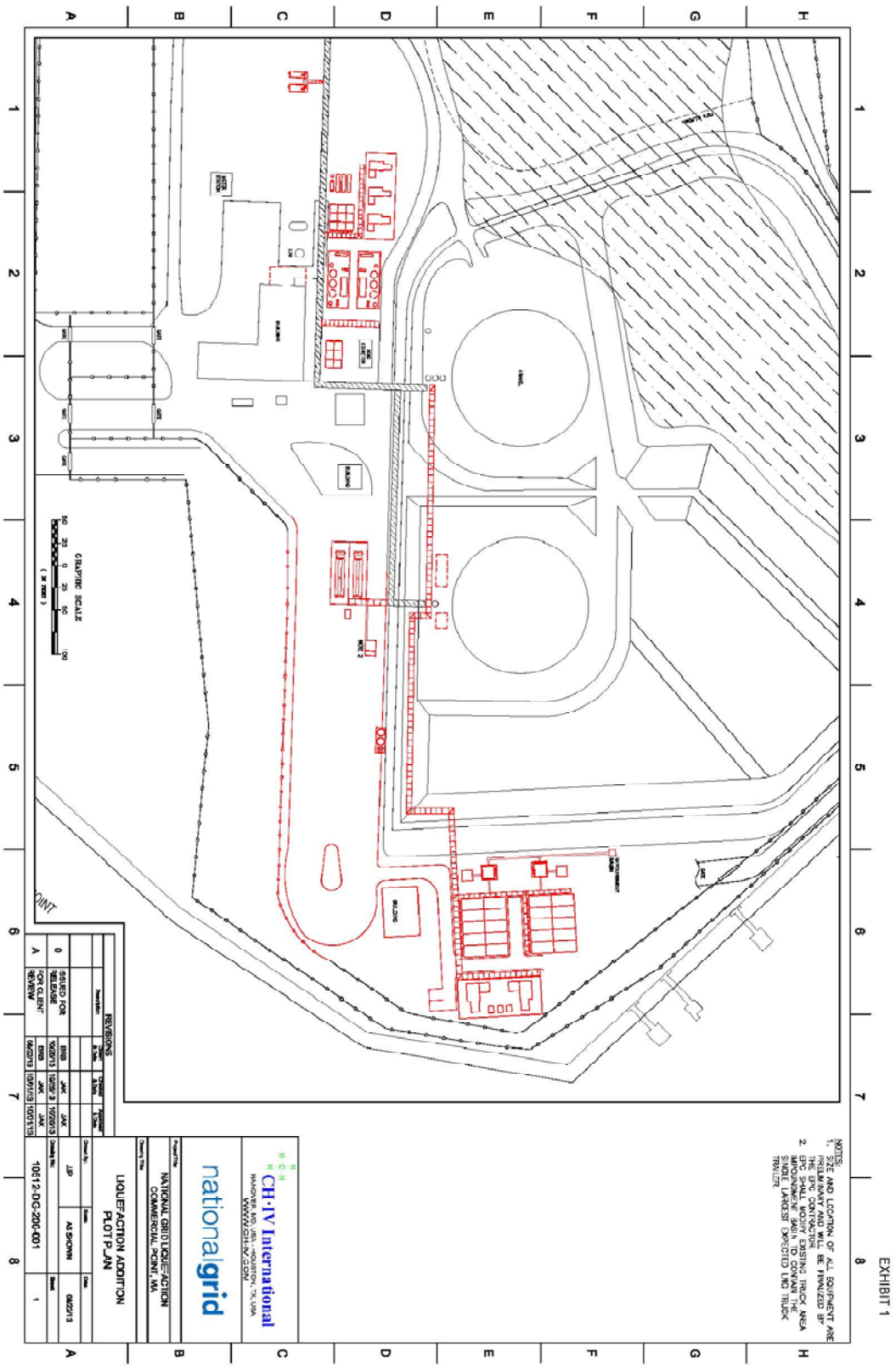
EXHIBIT 1
NOTES:
1. SIZE AND LOCATION OF ALL EQUIPMENT ARE PRELIMINARY AND WILL BE FINALIZED BY THE EPC CONTRACTOR.
2. MODIFY EXISTING TRUCK AREA IMPOVEMENT BASIS TO CONTAIN THE SINGLE LARGEST EXPECTED LNG TRUCK TRAILER
GRAPHIC SCALE
CH-IV International
nationalgrid
NATIONAL GRID LIQUEFACTION
COMMERCIAL POINT, MA
LIQUEFACTION ADDITION
PLOT PLAN
10512-DG-200-001
REVISIONS
ISSUED FOR RELEASE
ISSUED FOR DEVELOPMENT REVIEW
COMMERCIAL POINT